

Message Text

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SUBJECT: NATO EMPLOYMENT OF U.S. CITIZENS

1. THE JUSTIFICATION FOR EXECUTIVE ORDER 11633 OF DECEMBER 1, 1971 STATES THAT NATO CAN HIRE DIRECTLY U.S. CITIZENS WHO HAVE BEEN OUTSIDE THE UNITED STATES FOR AT LEAST 510 DAYS WITHIN A PERIOD OF 18 CONSECUTIVE MONTHS, AND WHOSE NATO SALARY FOR ANY TAXABLE YEAR DOES NOT EXCEED AN AMOUNT COMPUTED ON A DAILY BASIS AT AN ANNUAL RATE OF DOLS 20,000. THIS WAS DONE TO COMPLY WITH U.S. TAX LEGISLATION, AND WITH ARTICLE XIX, AGREEMENT OF THE STATUS OF THE NORTH ATLANTIC TREATY ORGANIZATION, NATIONAL REPRESENTATIVES AND INTERNATIONAL STAFF, OTTAWA, SEPTEMBER 20, 1951 AND ARTICLE VII.2 OF THE INTERNATIONAL MILITARY HEADQUARTERS PROTOCOL PROVIDING THAT SALARIES WOULD BE IMMUNE FROM TAXATION BY THE GOVERNMENT OF ANY MEMBER NATION OF NATO.

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2. WE HAVE ASKED THE OFFICE OF THE LEGAL ADVISER FOR AD-

VICE ON THE EFFECT OF THE NEW U.S. TAX LEGISLATION ON
THE US-NATO AGREEMENT ON DIRECT HIRE OF U.S. CITIZENS.
THE RESPONSE IS AS FOLLOWS:

"YOU REQUESTED ADVICE ON THE EFFECT OF THE NEW U.S. TAX
LEGISLATION (PUBLIC LAW 94-955) ON THE EXEMPTION FROM

TAXATION CURRENTLY BEING ENJOYED BY U.S. CITIZENS EM-
PLOYED BY NATO. THIS EXEMPTION RELATES TO SALARIES
PAID BY NATO WHICH DO NOT EXCEED DOLS 20,000 ANNUALLY
(COMPUTED ON A DAILY BASIS). YOU QUESTIONED WHETHER
THE NEW LEGISLATION WOULD ADVERSELY AFFECT THE OBLIGATION
OF ALL MEMBER STATES, INCLUDING THE U.S., UNDER ARTICLE
19 OF THE OTTAWA AGREEMENT NOT TO TAX SALARIES OF
OFFICIALS OF THE ORGANIZATION.

NOTHING IN SECTION 1011 OF THE TAX REFORM ACT OF 1976
WOULD EXEMPT SALARIES PAID TO U.S. CITIZENS EMPLOYED
BY NATO FROM TAXATION WITH RESPECT TO INCOME EXCEEDING
DOLS 15,000 ANNUALLY. THERE IS, THEREFORE, A CLEAR
CONFLICT BETWEEN THE CURRENT PRACTICE OF NOT TAXING
SALARIES AT OR BELOW DOLS 20,000 AND THE NEW REQUIRE-
MENTS IMPOSED BY THE ACT.

SINCE THE ACT WAS PASSED AFTER THE CONCLUSION OF THE
AGREEMENT, THERE APPEARS TO BE NO BASIS FOR CONCLUDING
THAT THE GENERAL OBLIGATION IMPOSED BY ARTICLE 19
SUPERSEDED THE SPECIFIC LIMITATION CONTAINED IN THE TAX
REFORM ACT.

THE OTTAWA AGREEMENT CONTAINS TWO MECHANISMS FOR RE-
SOLVING THE APPARENT CONFLICT. ARTICLE 19 ALLOWS A
MEMBER STATE TO EMPLOY ITS OWN NATIONALS AND ASSIGN THEM
TO THE ORGANIZATION, THEREBY ALLOWING THE MEMBER STATE
TO IMPOSE TAXES ON THEIR SALARIES. IN ADDITION, ARTICLE
25 OF THE AGREEMENT AUTHORIZES THE COUNCIL TO CONCLUDE
SUPPLEMENTARY AGREEMENTS WITH MEMBER STATES TO MODIFY
ANY PARTICULAR PROVISION OF THE AGREEMENT. WITH RESPECT
TO U.S. TAXATION OF SALARIES OF U.S. CITIZENS, THE LATTER
ROUTE MIGHT PROVE TO BE THE MOST PRODUCTIVE."

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3. WE DO NOT BELIEVE THAT WE SHOULD TRY TO MODIFY THE
OTTAWA AGREEMENT AS SUGGESTED BECAUSE ANY ATTEMPT TO
MODIFY THE AGREEMENT WOULD OPEN THE DOOR TO CHANGES
THAT OTHERS MAY WANT, AND THERE MIGHT BE MANY. YOUR
VIEW ON THIS POINT WOULD BE APPRECIATED.

4. THIS WOULD MEAN THAT WE WILL HAVE TO TERMINATE THE

US-NATO AGREEMENT ON DIRECT HIRE, (EXCEPT FOR EMPLOYEES WHOSE SALARIES WILL BE LESS THAN DOLS 15,000) AND ADVISE NATO THAT THE EMPLOYMENT OF U.S. CITIZENS WHOSE SALARY EXCEED DOLS 15,000 NOW ON THE NATO PAYROLL WILL HAVE TO BE TERMINATED. WE WOULD BE PREPARED TO EXPLORE THE POSSIBILITY OF PUTTING THESE NATO EMPLOYEES ON THE STATE OR DEFENSE PAYROLL TO BE SECONDED TO THE SAME POSITIONS THAT THEY NOW OCCUPY.

5. YOU SHOULD DISCUSS THIS MATTER WITH NATO OFFICIALS, WITH A VIEW OF ASCERTAINING HOW MANY U.S. CITIZENS WHOSE SALARY EXCEEDS DOLS 15,000 ARE NOW ON THE NATO PAYROLL, AND HOW MANY WOULD BE INTERESTED IN BEING SECONDED TO NATO AS U.S. GOVERNMENT EMPLOYEES.

6. YOU SHOULD ADVISE NATO THAT EFFECTIVE IMMEDIATELY, THE US-NATO AGREEMENT ON DIRECT HIRE APPLIES ONLY TO NATO POSITIONS WITH SALARIES THAT DO NOT EXCEED DOLS 15,000, AT THE TIME INDIVIDUALS ARE HIRED, AND IN THE FUTURE (EFFECT OF SALARY INCREASES). KISSINGER

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